

PRACTICE HINTS: FINANCIAL RESPONSIBILITY ISSUES

1. The most critical mediative skill and strategy in approaching financial responsibility issues is structure and organization. Remember that the mediator should not be the expert so that it is less important what the mediator knows than how effectively he or she presents and frames the issues for discussion.
2. Financial issues overwhelm many people and they are some of the most stressful in both marriage and business relationships and even more so in the restructuring of those relationships. Money issues — scarce resources — are also most likely to be the source of "real" or substantive conflict. Use that information; let people know that as you begin the discussion, to normalize the circumstance.
3. Observe and assess the parties' presumptions about fairness. Often they will unwittingly or implicitly, if not explicitly, attempt to use the legal standard (what the court would do vis a vis child support, property division) or a facile mathematical standard (50/50 is fair). Recall discussions of fairness in the first working session and frame the discussion in terms of the parties' personal standard of fairness. (See 8.3(4).) The legal or mathematical standards are mere "buoys" or markers — not determinants of fairness. Review the Court Guidelines in mediation for the purposes of comparison after doing the budgeting exercise. This will tend to discourage the parties from assuming the Child Support Guidelines are "set in stone." However, it is important to consider the Guidelines in the mediation process to fully inform the parties before the agreement is reviewed by attorneys ("No surprises" mediation). If parties are made aware of Child Support Guidelines for the first time by their attorneys, the credibility of the mediation process and mediator are justifiably open to question.
4. The primary task in financial responsibility is typically best framed as how both households or parties can maintain an adequate level of financial security or lifestyle, or conversely, how both can avoid feeling exploited or taken advantage of by gross disparity. Avoid confusing equality or parity with equitability. Specifically, if one party is to subsidize another, the issues will be how much and how long.